

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Subsection 29.85(a)(2)(A)
Title 14, California Code of Regulations
Re: Crabs – Open season

- I. Date of Initial Statement of Reasons: June 27, 2008
- II. Date of Final Statement of Reasons: September 10, 2008
- III. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: June 27, 2008
Location: Upland, CA
 - (b) Discussion Hearing: Date: August 8, 2008
Location: Carpinteria, CA
 - (c) Adoption Hearing: Date: September 4, 2008
Location: Kings Beach, CA
- IV. Update:

No modifications were made to the originally proposed language of the Initial Statement of Reasons.

At the September 4, 2008 adoption hearing, the Commission approved the proposed regulatory changes, and unanimously adopted Option 1 noticed in the Initial Statement of Reasons.
- V. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those Considerations:
 - 1. Two emails and a letter were received in support of Option 2 which would open the sport Dungeness crab season north of Sonoma County on the third Saturday in November. Reasons given include that this option would increase the present limited fishing opportunity for sportfishers and would not harm the resource.

**James Smith (Humboldt County Supervisor) and Jacqueline Smith,
Jon Fini, and Wayne Sohrakoff (Attachment 1, Comments 1, 2 and 3).**

Department response: The Department agrees that Option 2 would allow more fishing opportunity and not harm the resource but believes that Option 1, the first Saturday opener, would allow even more fishing opportunity without significant resource harm and create a uniform opening day statewide, improving enforcement and public understanding of the regulations.

2. One email and one oral public comment at the September 4, 2008 Commission meeting were received in support of Option 1 which would open the sport Dungeness crab season on the first Saturday in November. Reasons given include the uniform statewide opener, minimal impact to the resource, weather limits sport impacts and the economic benefit to the sport fishing industry which has been harmed by reductions in other fisheries.

Cliff Hart (Attachment 1, Comment 4), Jim Martin (Recreational Fishing Alliance Regional Director) (oral testimony)

Department response: See response above concerning Option 1.

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

(2) Open season:

(A) Del Norte, Humboldt and Mendocino counties: ~~From the last Saturday in November through July 30.~~ [From the (second OR fourth) Saturday in November through July 30.]
OR [From (November (1 - 30) through July 30].

(B) All other counties: ~~From the first Saturday in November through June 30.~~ [From the (second OR third OR fourth OR last) Saturday in November through June 30.] OR [From (November (1 - 30) through June 30].

This alternative encompasses all possible opening dates during the month of November, with the exception of the proposed regulation changes and addresses changes in both the north and central areas. It would also allow for opening dates which may differ between northern and central counties. This alternative allows the Commission the greatest flexibility in setting the opening dates but addresses a much greater geographic area and may create other issues with opening dates not being on a weekend.

These alternative dates were not included in the proposed action because, with the exception of the first and third Saturdays, there was no clear reason to single out any particular day in November as preferable over any other particular day. Consequently, the second and fourth Saturdays along with all of the specific calendar dates in November are identified as "Reasonable Alternatives to Regulatory Action".

(b) No Change Alternative:

29.85(a)(2) Open season:

(A) Del Norte, Humboldt and Mendocino counties: From the last Saturday in November through July 30.

(B) All other counties: From the first Saturday in November through June 30.

There is no requirement that sport fishermen be given any "head-start" fishing opportunity when the resources are shared between commercial and sport fisheries. However, societal desires often justify differences in management approaches in order to "balance" the "competition". The Commission has been responsive to this societal desire and the current regulations reflect this "balance" although not adequately according to the individuals who contacted the Department.

(c) Consideration of Alternatives:

In view of the information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulation.

IX. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

There is no anticipated significant increase or decrease in costs to either Department administrative, biological or enforcement divisions, associated with the proposed project. An earlier opening season in Del Norte, Humboldt and Mendocino counties may increase fishing effort by some unknown, but limited amount, while shifting effort from later to earlier dates.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

(h) Effect on Housing Costs:

None.

Attachment 1 – Comments Received on Proposed Recreational Dungeness Crab Regulation Changes (2008).

Comment 1

From: "Smith, Jimmy R." <JRSmith@co.humboldt.ca.us>
To: <FGC@fgc.ca.gov>
CC: "Marija Vojkovich" <mvojkovich@dfg.ca.gov>, "Peter Kalvass" <pkalvass@df...
Date: 8/12/2008 12:30 PM
Subject: Proposed Dungeness Crab Sport Fishery Regulation Changes

Dear Commissioners, thank you for the opportunity to comment on the proposed sport Dungeness Crab fishery regulation changes. As a sport fishermen and as a former 40 year commercial Dungeness fisherman, I applaud the effort to provide more recreational opportunity. The commercial fishing effort has increased dramatically with no gear restrictions in sight. As a result the sport fishermen are often limited to smaller non marketable catches. The Department's Option Two would offer a reasonable opportunity for fishing and a small share of the larger Dungeness. We strongly support Option Two's "Third Saturday" opener for the Northern recreational Dungeness season and thank the Department of Fish and Game's staff for bringing this alternative forward. James R. and Jacqueline K. Smith 6389 Loma Ave. Eureka CA 95503

Comment 2

From: jon fini <d.fini@sbcglobal.net>
To: <FGC@fgc.ca.gov>
Date: 8/6/2008 12:59 PM
Subject: Sport Crab Season

I am writing to encourage you to adopt option two for an earlier sport season. The amount of crab caught by sport guys is very small and on years that the commercial fishermen dont strike over the price we are lucky to get any at all. A wiser plan for the future would be to delay commercial season until the middle of December and start sport on the first of December so that the crab would be in better shape. This would still put crab in the market before the Christmas season and contrary to the crying of the industry they will make the same money just two weeks later which is often the case anyway due to light crab or bickering over price.

Thank you for your time, Jon Fini

Attachment 1 – Comments Received on Proposed Recreational Dungeness
Crab Regulation Changes (2008) continued.

Comment 3

SEP-02-2008 16:17

VILLAGE PHARMACY

530 633 0159 P.02

**California Fish and Game Commission
1416 Ninth St., Box 944209
Sacramento, CA. 94424-2090**

Dear Sirs,

**My name is Wayne Sohrakoff and I am a sport fisherman
residing at 20 Silvertip Lane, Eureka, CA.**

**I urge you to adopt Option 2 for the proposed dungeness
crab sport fishery regulation change. T14, subsection
29.85(a)(2)(A).**

**This would enable sport crab fishermen greater access to
the crab resource without having to compete with the
commercial fleet.**

Respectfully Submitted,


Wayne Sohrakoff

TOTAL P.02

Comment 4

Dear Fish & game Commission,

Please adopt the season up here in Humboldt beginning the first Saturday in November. Our season should coincide with the area south of us and our sport impact as compared to previous years would be minimal due to weather conditions.

Cliff Hart
707-441-1906

Updated Informative Digest/Policy Statement Overview

Current regulations of Section 29.85 (a)(2)(A) of Title 14, CCR specify that Dungeness crab may be taken recreationally from the last Saturday in November through July 30 in Del Norte, Humboldt and Mendocino counties. Depending on the calendar year, northern California recreational Dungeness crab fishermen have a maximum of seven days and a minimum of one day advance fishing opportunity before the commercial season begins. However, since commercial crab traps may be baited and set in advance of the opening day, this year (2008) commercial fishermen will be able to set gear before the sport season opens.

The commercial crab season in districts six, seven, eight and nine (Del Norte, Humboldt and Mendocino counties) opens on December 1 (unless it is delayed by the Director pursuant to FGC Section 8276.2) and closes on July 15, by authority of FG Code section 8276. In addition, FG Code section 8283 allows the Director to specify a date and time when commercial crab traps may be baited and set in advance of the opening day. This has traditionally been a 64 hour pre-soak period.

The presumed intent of the sport fishery opening date in advance of the commercial season opening date was to give the sport fishermen a brief period of time to fish for Dungeness crab without competition from commercial fishermen and their gear. The result, though, is that in some seasons, such as 2008/09, the sport crabbing season will not begin until after the commercial fishermen have had an advance opportunity to set their gear in the prime crab areas. Currently, with the traditional 64 hour commercial pre-soak period, sport fishermen in northern counties can encounter commercial gear on about 40 percent of their opening days.

The Department received several dozen faxes, letters and phone calls since last November from northern California sport fishermen, requesting more Dungeness crab fishing time for the sport fishery prior to the commercial season. Sport fishermen claim that once the commercial fishery begins, they can't catch any "decent" sized crab and they can't find an open place nearshore for their crab traps. The issue of an earlier sport fishery opening date was addressed by the Commission in 2006 in response to testimony at a Commission meeting from a sport fisherman, Mr. John Duffy, who requested a uniform statewide November 1st opening date for Dungeness crab. Commission records indicate that the uniform November 1st opening date request was rejected by the Commission. However, regulatory language regarding the season opener was changed with the 2007/08 season for both regions, in order to make the language less confusing (amendment of subsections (a)(2)(A)-(B) operative 2-28-2007). In central California, it was changed from 'the Saturday before the second Tuesday in November' to the 'first Saturday in November'; while in northern California the language was changed from 'the Saturday before December 1st' to 'the last

Saturday in November’.

The proposed regulations would allow the Commission to change the sport fishery opening date in the northcoast to either the first or third Saturday in November.

**Proposed Dungeness crab sport fishery regulation changes – T14,
Subsection 29.85(a)(2)(A)**

29.85 Crabs. (a) Dungeness crab (*Cancer magister*): (2) Open Season: (A) Del Norte, Humboldt and Mendocino counties: [(Option 1) From the first last Saturday in November through July 30] OR [(Option 2) From the third last Saturday in November through July 30].

If adopted for the 2008/09 season, under Option (1) north coast fishermen would have an additional 28 days of fishing prior to the commercial opening, and under Option (2) north coast fishermen would have an additional 14 days of fishing prior to the commercial opening (not including the commercial pre-soak allowance). In any particular season, the fewest pre-commercial season fishing days possible under Option (1) would be 23 days, and nine days under Option (2). An increase in crab fishing opportunity could help to offset lost opportunity in other fisheries, such as salmon and groundfish.

Option (1) simplifies statewide regulations by establishing a uniform opening date for the recreational Dungeness crab fishery throughout the entire state, while Option (2) provides a similar number of days for the recreational fishery prior to the onset of commercial fishing in both the north coast and central coast management regions. Option (2) also reduces the likelihood of encountering soft crab compared to Option (1).

The Commission adopted Option 1 at its September 4, 2008 meeting.